

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 20-003-17-1-5-01019-18
20-003-18-1-5-00193-19
Petitioner: David L. Beachy
Respondent: Elkhart County Assessor
Parcel: 20-16-07-251-002.000-003
Assessment Years: 2017 & 2018

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. David L. Beachy filed appeals with the Elkhart County Assessor contesting the 2017 and 2018 assessments of his residential property located at 68227 U.S. Highway 33 in Goshen. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued determinations for both years valuing the property as follows:

Land: \$35,200 Improvements: \$0 Total: \$35,200

2. Mr. Beachy timely filed Petitions for Review of Assessment (Form 131s) with the Board and elected the Board's small claims procedures. On April 24, 2019, the Board's designated administrative law judge (ALJ) Joseph Stanford held a consolidated hearing on the petitions. Neither he nor the Board inspected the subject property.
3. Mr. Beachy appeared *pro se* and was sworn. Attorney Beth H. Henkel appeared for the Respondent. Appraiser Gavin Fisher and County Assessor Cathy Searcy were sworn as witnesses.

Record

4. The official record for this matter is made up of the following:
 - a) A digital recording of the hearing.
 - b) Exhibits:

Petitioner Exhibit 1: Aerial view of the subject property from the Indiana Department of Natural Resources (DNR) website,

- Petitioner Exhibit 2:¹ Satellite imagery map from the DNR,
 Petitioner Exhibit 3: Email from Marianne Hawkins of the DNR to Mr. Beachy, dated April 23, 2019,
 Petitioner Exhibit 4: Letter from Cindy R. Yoder, real estate broker, dated June 13, 2018,
 Petitioner Exhibit 5: Two photographs of a portion of the subject property.
- Respondent Exhibit R-1: Appraisal of the subject property prepared by Gavin Fisher with an effective date of January 1, 2017,
 Respondent Exhibit R-2: Aerial map of the subject property,
 Respondent Exhibit R-3: Aerial map of the subject property indicating floodplains,
 Respondent Exhibit R-4: Aerial map of the subject property with “shading, denoting areas of diminished value,”
 Respondent Exhibit R-5: Trending computation,
 Respondent Exhibit R-6: Email correspondence between Mae Kratzer and Ty Miller dated April 16, 2018.

- c) The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or ALJ; and (3) these findings and conclusions.

Objections

5. Ms. Henkel objected to Petitioner’s Exhibit 4, a letter from real estate broker Cindy Yoder estimating the subject property’s value, on the grounds of hearsay. The Petitioner did not offer any argument in response. The ALJ took the objection under advisement.
6. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 I.A.C. 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

¹ Mr. Beachy offered two versions of Petitioner’s Exhibit 2 because on one version the “map coding” in the left margin was cut off.

7. Petitioner's Exhibit 4 is hearsay. The hearsay rule contains a specific exception for appraisal reports. Effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include the following language:

(p) At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p) (2015 Ind. Acts sec. 33, SEA 467). However, while Petitioner's Exhibit 4 is an estimate of value, it is not "an appraisal report, prepared by an appraiser." Accordingly, this exception to the hearsay rule does not apply. While the exhibit does nothing to either prove or disprove the property's market value-in-use, the exhibit is admitted. With that being said, because the Respondent objected to the exhibit, it cannot serve as the sole basis for the Board's decision.

Burden of Proof

8. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exception to that rule.
9. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
10. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

11. Here, the Respondent, who was represented by counsel, accepted the burden of proof for 2017. The Respondent indicated the total assessment increased from \$15,000 in 2016 to \$35,200 in 2017. The Petitioner did not offer any argument to the contrary. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2017 assessment is correct. The burden for 2018 will be determined by the result of the 2017 appeal.

Summary of Contentions

12. The Respondent's case:
- a) The subject property is currently under assessed. In an effort to support this argument, the Respondent offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by licensed residential appraiser Gavin Fisher. Mr. Fisher performed an appraisal valuing the property as of January 1, 2017, for \$45,000. According to Mr. Fisher this value also applies to the January 1, 2018, valuation date. The 2017 and 2018 assessments should be increased to this amount. *Henkel argument; Fisher testimony; Resp't Ex. R-1*
 - b) Mr. Fisher began by completing an overall neighborhood analysis, indicating typically stable and static market conditions. The property's market area is slightly larger than normal, but would compete relatively equally across most of Elkhart County. *Fisher testimony; Resp't Ex. R-1.*
 - c) According to Federal Emergency Management Agency (FEMA) maps, about 13,000 square feet of the property's total 3.52 acres are located in a floodplain. Only flooding, and not merely low elevation, is considered to negatively affect value. The predominant portion of the parcel is unencumbered and developable. This fact has been confirmed by the Elkhart County Planning and Zoning Department. The property does have access to a river, but this type of access does not command typical waterfront pricing. Mr. Fisher determined that the loss in value for the small portion of the property located in the floodplain is offset by the view, access rights, and fishing rights on the river. *Fisher testimony; Resp't Ex. R-1, R-4, R-6.*
 - d) In developing his sales comparison approach, Mr. Fisher considered properties with the same "developmental potential" as the subject property. Some of the properties he selected have had homes constructed on them since the date of the sale. There were enough 2016 sales in the area to "whittle down" the comparable properties to those between two and five acres. *Fisher testimony; Resp't Ex. R-1.*
 - e) Mr. Fisher selected five comparable properties. He listed the property values in terms of price per acre, and he explained the adjustments he made in detail. The first property he selected is located at 23796 County Road 26 in Elkhart. This property required a 10% negative adjustment because it is located in a suburban area, and therefore closer to employment, schools, and shopping. The second property he selected is located at 10318 County Road 4 in Middlebury. This property is the "most

- similar” to the subject property and as a result required no adjustments. *Fisher testimony; Resp’t Ex. R-1.*
- f) The third property, located at 24654 County Road 26 in Elkhart, is “more complicated.” This property required a 25% negative adjustment. Ten percent of that is attributable to restrictions for parcels under three acres, something that is unique to Elkhart County. The remaining 15% is attributable to the restrictive covenants of its subdivision. *Fisher testimony; Resp’t Ex. R-1.*
 - g) Mr. Fisher intentionally selected the last two properties that were “encumbered by issues affecting the ability to build on them.” Specifically, the fourth property includes a “retention area” in the center of the property. This property would require additional costs for things such as utility infrastructure and driveway preparation to bring the parcel to “shovel-ready” condition. *Fisher testimony; Resp’t Ex. R-1.*
 - h) The last property is located next to a creek, and is entirely in a FEMA floodplain. In order to develop on this property, fill dirt would have to be brought in and any potential owner would have to purchase flood insurance. Consequently, a 30% adjustment was made to account for these issues. *Fisher testimony; Resp’t Ex. R-1.*
 - i) Mr. Fisher’s “overall reconciliation” resulted in “a very tight range” of price per acre, from \$11,600 to \$15,600. The property located at 10318 County Road 4, the most similar to the subject property, came in at roughly \$13,000 per acre. The third and fifth comparable properties did as well. Accordingly, Mr. Fisher settled on a value of \$13,000 per acre, for a rounded value of \$45,000 as of January 1, 2017. *Fisher testimony; Resp’t Ex. R-1.*
 - j) Finally, Mr. Fisher analyzed the market to trend his 2017 value to January 1, 2018. According to his analysis, the market indicated a slightly upward trend, but he concluded that this trend was likely due to seasonable variables and outside influences that may have affected some of the sales. He ultimately concluded that the market was static between January 1, 2017, and January 1, 2018. Therefore, the property’s January 1, 2018, value, according to Mr. Fisher, should also be \$45,000. *Fisher testimony; Resp’t Ex. R-5.*

13. The Petitioner’s case:

- a) The property’s assessment is too high. The property was assessed at \$15,000 in 2016. A portion of the property is located in a floodplain and this area floods. There are additional “areas” of low elevation that are roughly three feet lower than the FEMA floodplain, which is set at 827.9 feet. The Petitioner’s home on an adjacent lot has “an eight-foot higher elevation.” *Beachy argument; Pet’r Ex. 1, 2, 3, 5.*
- b) In an effort to prove his case, Mr. Beachy provided a letter dated June 13, 2018, from local real estate broker Cindy Yoder. In her letter, Ms. Yoder appears to rely on the sale of two other properties that she considered comparable, and opines that the fair

market value of the subject property is \$22,847. Further, Mr. Beachy notes that he purchased a three-acre property “right across the road” for approximately \$4,200 at an auction in “2015 or 2016.” *Beachy testimony; Pet’r Ex. 4.*

- c) According to Mr. Beachy, he cannot simply sell the property to someone to put a house on it. On certain areas of the property, the “water table” is only two feet below grade. Thus, a buyer could not dig footers or put in a crawl space. It would be expensive to raise the land level up to be able to build on it. *Beachy argument.*

Analysis

14. Indiana assesses real property based on its “true tax value,” which is determined under the rules of the Department of Local Government Finance (DLGF). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). “True tax value” does not mean either “fair market value” or “the value of the property to the user.” Ind. Code § 6-1.1-31-6(c) and (e). In accordance with these statutory directives, the DLGF defines “true tax value” as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.
15. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally accepted appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting an assessment’s presumed accuracy). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2017 assessments, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5. For 2018 assessments, the valuation date was January 1, 2018. *Id.*
16. We first turn to the 2017 assessment. The burden was on the Respondent to prove the current assessment is correct. The Respondent’s burden in seeking an increase in the assessment is to prove both the current assessment is incorrect, and what the correct assessment should be. *Meridian Towers*, 805 N.E.2d 475, 478. In an effort to support increasing the assessment, the Respondent offered a USPAP complaint appraisal report performed by Mr. Fisher, a licensed residential appraiser. In developing his final opinion of value, Mr. Fisher relied solely on the sales-comparison approach to value the unimproved 3.52-acre lot. Mr. Fisher explained why he selected his purportedly comparable properties, and explained the adjustments he applied. Mr. Fisher also testified that he considered the fact that a small portion of the lot is located in a floodplain. Mr. Fisher determined the subject property’s market value-in-use to be \$45,000 as of January 1, 2017. Generally, an appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479.

17. In response, Mr. Beachy offered maps, photographs, and testimony indicating that a portion of the lot is located in a FEMA floodplain. Mr. Beachy also argued that a “portion” of the lot actually floods, and that certain other “areas” are at the same or lower elevation than the portion in the floodplain. While these factors certainly have the potential to affect the property’s value, Mr. Beachy needed to produce probative market based evidence quantifying the impact those factors have on the property’s market value-in-use. *See Talesnick v. State Bd. of Tax Comm’rs*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
18. In that vein, Mr. Beachy offered a letter from Ms. Yoder, a local real estate broker. Ms. Yoder estimated the value at \$22,847 as of June 13, 2018. But because the letter was properly objected to as hearsay, we cannot rely on it as the sole basis of our determination. And even if we could rely on it, the effective date is more than 18 months removed from the January 1, 2017, valuation date.
19. Even without those issues, Mr. Fisher’s appraisal is easily more probative. Ms. Yoder is not a licensed appraiser, and she did not certify that she complied with generally recognized appraisal principles in preparing her valuation opinion. Ms. Yoder listed only two purportedly comparable properties, and she did not explain why they are comparable to the subject property nor did she indicate any adjustments she made to account for differences between the properties.
20. Finally, Mr. Beachy testified that he purchased a three-acre property “across the road” from the subject for approximately \$4,200 at an auction in “2015 or 2016.” This testimony, unfortunately, fails to prove that the subject property’s assessment is too high, or what the correct assessment should be.
21. For these reasons, Mr. Beachy failed to impeach or rebut the Respondent’s prima facie case that the 2017 assessment should be increased to \$45,000. Accordingly, we find that the 2017 assessment should be increased to that value.
22. Turning to 2018, the current assessment is \$35,200, which is less than the newly determined 2017 assessment of \$45,000. Therefore, Mr. Beachy has the burden of proof for 2018.
23. Mr. Beachy offered the same evidence for 2018 as he did for 2017. And for most of the same reasons discussed above, his evidence is insufficient to prove that either the subject property’s assessment is wrong, or what the correct assessment should be.² Thus, Mr. Beachy failed to make a prima facie case that his 2018 assessment is incorrect.

² The only issue discussed for 2017 that would not apply to the 2018 appeal is the effective date of Ms. Yoder’s estimate of value. The effective date of June 13, 2018, is only six months removed from the January 1, 2018, valuation date. Absent the other problems we discussed with this exhibit, the effective date would have made Ms. Yoder’s estimate more probative for 2018 than for the 2017 appeal. Still, for the same reasons as listed above, we find Ms. Yoder’s estimate of value to be lacking in probative value.

24. Our inquiry for 2018 does not end there, because the Respondent offered Mr. Fisher's trending of his 2017 appraisal to the January 1, 2018, valuation date. Mr. Fisher, who again is a licensed appraiser, analyzed sales and determined that the subject's market was "static" between 2017 and 2018. He concluded, therefore, that the subject property's market value-in-use at January 1, 2018, was also \$45,000. Accordingly, we find that the 2018 assessment should also be increased to \$45,000.
25. While the Board is generally reluctant to increase an assessment, the Petitioner was aware this could happen when the appeal was filed. We therefore order the 2017 and 2018 assessments to be changed to the value indicated on Mr. Fisher's appraisal.

Conclusion

26. The Respondent made a prima facie case for increasing the 2017 and 2018 assessments to \$45,000. The Petitioner attempted to rebut the Respondent's case but failed.

Final Determination

In accordance with the above findings and conclusions, the 2017 and 2018 assessments must be increased to \$45,000.

ISSUED: July 19, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.